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SUPREME COURT, U.S.
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No. 10-668

In the Supreme Court of the United States

MARY ROBYN PRIESTER,

Petitioner,

v.

FORD MOTOR COMPANY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

SUPPLEMENTAL BRIEF FOR RESPONDENT

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RULE 29.6 STATEMENT

Ford Motor Company has no parent corporation, and no publicly held company owns ten percent or more of its stock.

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ARGUMENT

Pursuant to Supreme Court Rule 15.8, respondent hereby submits this supplemental brief in response to the Court's decision in *Williamson v. Mazda Motor of America, Inc.*, No. 08-1314, slip op. (Feb. 23, 2011).

1. In *Williamson*, the Court held that Federal Motor Vehicle Safety Standard (FMVSS 208), 49 C.F.R. § 571.208 (1987)—which gives manufacturers the option of installing either a lap-and-shoulder seatbelt or lap-only seatbelt in certain rear seating positions of vehicles—does not preempt a state tort law claim seeking to hold manufacturers liable for installing one type of seatbelt instead of the other option. In so holding, the Court reaffirmed this Court's decision in *Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000), and then held—based on its assessment of the particular history of FMVSS 208—that allowing the plaintiff's state tort action to proceed in *Williamson* would "not 'stan[d] as an obstacle to the accomplishment ... of the full purposes and objectives' of federal law." *Williamson*, slip op. at 3-5, 12 (alterations in original) (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)); *see id.* at 8 ("[U]nlike *Geier*, we do not believe here that choice is a significant regulatory objective" under rule at issue).

In reaching that conclusion, the Court pointed to several aspects of the regulatory history of FMVSS 208. First, the Court noted that, although the agency had rejected "a regulation that would have required the use of lap-and-shoulder belts in rear seats" in 1984, the agency had "'concluded that several factors had changed'" when it promulgated the rule at issue in 1989, including as to safety. *Id.* (quoting 54 Fed. Reg. 46,257, 46,258 (Nov. 2, 1989)). Second, the Court noted

that, although the agency did not require lap-and-shoulder belts in rear seats in its 1989 rule, it "encouraged manufacturers to address this issue through innovation." *Id.* at 10 (citing 54 Fed. Reg. at 46,258). Third, the Court concluded that there was "little indication that [the agency] considered this matter a significant safety concern." *Id.* Fourth, the Court found that the agency did not "seek to use its regulation to spur the development of alternative kinds of rear aisle or middle seat safety devices." *Id.* at 9. In addition, the Court pointed to the fact that "the Solicitor General tells us that [the agency]'s regulation does not pre-empt this tort suit." *Id.* at 11.

2. This Court's decision in *Williamson* underscores that the petition for certiorari in this case should be denied. As explained in respondent's brief in opposition (at 2-4), this case involves a different FMVSS (FMVSS 205) adopted on the basis of a distinct regulatory record. The South Carolina Supreme Court considered that regulatory record based on this Court's decision in *Geier* and correctly concluded that petitioner's action is preempted by FMVSS 205. *See* Pet. App. 4-7, 7-9, 11-13. Now that this Court has reaffirmed its decision in *Geier* (despite the request of some in *Williamson* that the Court should reconsider or overrule *Geier*, *see, e.g.*, No. 08-1314 Br. for Attorneys Information Exchange Group 22 (Aug. 5, 2010); No. 08-1314 Br. for States of Illinois *et al.* 25 (Aug. 6, 2010); No. 08-1314 Br. for Public Justice 1-2 (Aug. 6, 2010)), the South Carolina Supreme Court's decision in this case represents record-specific application of settled—and now reaffirmed—law. There is no reason for the Court to "GVR" the petition so the South Carolina Supreme Court can consider this

case in light of *Geier*, again. The court has already carefully done so. And having just decided *Williamson*, there is no reason to grant certiorari to reconsider the continuing vitality of *Geier* here.

Furthermore, the regulatory record in this case is distinguishable in important respects from the one in *Williamson* and, instead, is similar to the record in *Geier*. First, the agency consistently cited safety concerns in refusing to adopt an advanced-glazing requirement. Opp. 3-4. Indeed, as the South Carolina Supreme Court recognized, NHTSA specifically stated that it was "'extremely reluctant to pursue a requirement that may increase injury risk for belted occupants to provide safety benefits primarily for unbelted occupants.'" Pet. App. 7 (quoting NHTSA, *Ejection Mitigation Using Advanced Glazing: Final Report* at x (Aug. 2001) (NHTSA Final Report)); *see* 67 Fed. Reg. 41,365, 41,367 (June 18, 2002) (recognizing "increase[d]" risk of injury posed by laminated glass). That "extreme[]" reluctance is supported by an express purpose of FMVSS 205—"to reduce injuries resulting from impact to glazing surfaces," 49 C.F.R. § 571.205 S2—not to mention NHTSA's longstanding regulatory efforts to encourage seatbelt use. Those regulatory objectives are unquestionably "significant." *Williamson*, slip op. at 6; *see Geier*, 529 U.S. at 875-81.

Second, in *Williamson* this Court (as well as the plaintiff and United States) emphasized a sentence in the Federal Register stating that NHTSA "'encourage[d]'" manufacturers to install lap/shoulder belts in rear aisle seats—when feasible to do so. *Williamson*, slip op. at 10 (quoting 54 Fed. Reg. at 46,258); *see* No. 08-1314 Pet. Br. 11, 26, 37, 40, 44 (July 30, 2010); No. 08-1314 U.S. Br. 17, 18, 20, 21, 22, 28

(Aug. 6, 2010). There is no such statement in the pertinent regulatory history of FMVSS 205. To the contrary, as noted, NHTSA stated that it was "'extremely reluctant'" to impose an advance-glazing requirement due to safety concerns for belted occupants. Pet. App. 7 (quoting NHTSA Final Report at x).

Third, in declining to adopt an advanced-glazing requirement, NHTSA specifically cited the "advent of other ejection mitigation systems, such as side air curtains," and determined that it was "more appropriate" to focus on the development of such other systems. 67 Fed. Reg. at 41,367. Thus, in addition to safety concerns, the agency's rejection of an advanced-glazing requirement was based on a desire to foster the study and development of potentially more promising ejection mitigation systems. That objective is analogous to the agency's effort to encourage the development of other safety systems in rejecting an all-airbag rule in 1984—an objective that *Geier* establishes is both significant and preemptive. *See Geier*, 529 U.S. at 879; *Williamson*, slip op. at 7 (discussing *Geier*). In *Williamson*, by contrast, the Court found that the agency did not "seek to use its regulation to spur the development of alternative kinds of rear aisle or middle seat safety devices." *Williamson*, slip op. at 9.

In *Williamson*, this Court also relied on the Solicitor General's brief maintaining that FMVSS 208 "does not pre-empt this tort suit." *Id.* at 11. That brief, like the Court's decision in *Williamson*, was focused on the particular aspects of the regulatory history of FMVSS 208. As discussed, the distinct regulatory history of FMVSS 205 compels the result reached in *Geier*, not *Williamson*. Moreover, in

Williamson this Court determined that it was appropriate to rely on the agency's views because the Solicitor General had previously argued that a standard giving manufacturers a design option was not preemptive where "'the Secretary did not determine that the availability of options was necessary to promote safety.'" *Id.* at 12 (quoting *Geier* U.S. Br. 22 (Nov. 8, 1999)). Here, the regulatory record shows that the agency maintained the option at issue to promote safety.

CONCLUSION

For the foregoing reasons, and those in respondent's brief in opposition, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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